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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC.,
MARVEL CHARACTERS, INC. and
MVL RIGHTS, LLC,

Plaintiffs,

-against-

LISA R. KIRBY, BARBARA J. KIRBY,
NEAL L. KIRBY and SUSAN M. KIRBY,

Defendants.

Civil Action No. 10-141 (CM) (KF)

[Hon. Colleen McMahon]

[ECF Case]

**REPLY DECLARATION OF LISA R. KIRBY IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

I, Lisa R. Kirby, hereby declare as follows:

1. I am the daughter of Jack Kirby (a.k.a. Jacob Kurtzberg), the comic book creator and artist, and the Trustee of The Rosalind Kirby Trust (“Trust”), the California testamentary trust of my mother. I am familiar with the facts set forth below and make this declaration in further support of defendants’ motion to dismiss. The facts set forth herein are known to me of my own personal firsthand knowledge and, if called as a witness, I could and would testify competently thereto under oath.

2. In or about June, 2006, I, as Trustee of the Trust, was contacted at my residence in California by Marvel Characters, Inc. (“MCI”), which sought to purchase a single page of my father’s comic book artwork that was owned by the Trust. MCI sent the Trust a one-page form “Artwork Transfer and Ownership Agreement,” which I promptly signed without negotiation. MCI paid a minor “per page” rate for the artwork, and I deposited MCI’s check in the Trust’s California bank account.

3. I read in paragraph 6 of Plaintiffs’ complaint in this action that MCI is a “Delaware corporation[] maintaining its principal place of business at 1600 Rosecrans Avenue, Manhattan Beach, California 90266.”

4. Sporadically in 2008, I, as Trustee of the Trust, was again contacted at my residence in California by MCI, which sought to purchase a few additional pages of my father’s artwork, owned by the Trust, for the same per page rate. For this MCI furnished and I promptly signed three form agreements. One of them listed a California address for MCI. As before, I deposited MCI’s checks in the Trust’s California bank account.

5. In recently looking over these agreements I realize that they purport to be with “Lisa R. Kirby, as administrator of the estate of Jack Kirby,” but I nonetheless

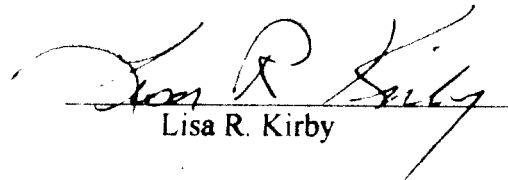
signed them "Lisa R. Kirby, Trustee" – that is, as Trustee of The Rosalind Kirby Trust. I was never the administrator of my father's estate, which, in any event, closed shortly after his death on February 6, 1994.

6. Marvel Publishing, Inc. entered into an agreement with me dated February 21, 2006 for the limited publication of my father's *Galactic Bounty Hunter* work. Marvel provided me with a form publishing agreement which by its terms expired in February 2007. On June, 24, 2008 this agreement was renewed for one year, but Marvel terminated it shortly thereafter and the work was not republished.

7. I have entered into no other agreements with MCI or any other Marvel entity.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Dated: April 6, 2010


Lisa R. Kirby

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served electronically by the Court's ECF system and by first class mail on those parties not registered for ECF pursuant to the rules of this Court.

Dated: April 6, 2010

TOBEROFF & ASSOCIATES, P.C.

By: s/Marc Toberoff
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